

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 00-CR-80541

v.

HON. GEORGE CARAM STEEH

YUK RUNG TSANG (D-1),

Defendant.

OPINION AND ORDER DENYING DEFENDANT'S MOTION
FOR REDUCTION OF SENTENCE (Doc. 361)

This matter comes before the court on Defendant Yuk Rung Tsang's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Because this court does not have jurisdiction to review a decision by the Bureau of Prisons ("BOP") not to seek a compassionate release for an inmate, Defendant's motion shall be DENIED.

I. FACTS

Defendant is 70 years old and a Chinese national. He has multiple convictions for heroin trafficking and began serving a 30 year prison sentence on June 10, 2002. Shortly after his March, 2013 transfer to the Federal Medical Facility in Butner, North Carolina ("FMC Butner"), doctors determined Defendant had advanced liver disease with probable cancer. Defendant requested that the Federal Bureau of Prisons ("BOP") move for his compassionate release in federal court. On May 17, 2013, the BOP's Reduction in Sentence Committee recommended that Defendant's sentence not be reduced, based on his "past criminal history and continued risk to the community," and

the warden concurred. On January 2, 2014, doctors reported Defendant's prognosis is "grave" and that he is "approaching the terminal cliff."

II. ANALYSIS

The BOP may seek the reduction of a prisoner's sentence in federal court pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). The statute states, "The court may not modify a term of imprisonment once it has been imposed except that...the court, *upon motion of the Director of the Bureau of Prisons*, may reduce the term of imprisonment..." 18 U.S.C. § 3582(c)(1)(A) (emphasis added).

The Sixth Circuit has determined that a federal court lacks jurisdiction to review a decision by the BOP not to seek a compassionate release for an inmate under § 3582(c)(1)(A). *Crowe v. United States*, 430 F. App'x 484, 485 (6th Cir. 2011); see also *Engle v. United States*, 26 F. App'x 394, 397 (6th Cir. 2001) ("The district court lacked jurisdiction to sua sponte grant compassionate release. A district court may not modify a defendant's federal sentence based on the defendant's ill health, except upon a motion from the Director of the Bureau of Prisons."). Other circuits have determined the same. See *Fernandez v. United States*, 941 F.2d 1488, 1493 (11th Cir. 1991); *Simmons v. Christensen*, 894 F.2d 1041, 1043 (9th Cir. 1990); *Turner v. United States Parole Comm'n*, 810 F.2d 612, 615 (7th Cir. 1987).

The relevant section of the BOP's Program Statement, entitled "Denial of Request," provides no standards or procedures that the BOP must follow in determining whether to deny a request for reduction of sentence, leaving it unlimited discretion. 28 C.F.R. § 571.63. As such, this court does not have jurisdiction to review the BOP's decision not to move for a reduction of Defendant's sentence.

III. CONCLUSION

For the foregoing reasons, Defendant's motion (Doc. 361) is DENIED.

IT IS SO ORDERED.

Dated: March 3, 2014

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 3, 2014, by electronic and/or ordinary mail and also on Yuk Rung Tsang #37357-053, FMC Butner, Federal Medical Center, P.O. Box 1600, Butner, NC 27509.

s/Barbara Radke
Deputy Clerk